

Comments Requested by Public Notice

MB Docket No. 10-238

Submitted by: Jon A. Robison

Bayfield CO 81122-9660

First, I would suggest the approach suggested in the subject Public Notice is, while quite rigorous, overly complicated. My suggestion is to request from the DBS operators the number of households (I concur with your assumption that this is the same as “subscriber” or other similar terms) assigned to out-of-state DMAs (Colorado subscribers assigned to a New Mexico DMA or Missouri subscribers assigned to an Illinois DMA). This should be straight forward since they have our home addresses. It should be noted that the DBS programming reception is programmed in the receivers, the satellites broadcast pretty much everything available. As an example, Direct TV (Hughes) and Dish Network (Echostar) would provide the number of subscribers to their service for the portion of Colorado that is assigned to the Albuquerque DMA. According to your statements in the Public Notice, you currently receive this data from cable companies and have the ability to adjust cable companies programming sources to minimize the “out-of-state” concern. A similar approach would serve the DBS subscribers well. The “area of coverage” for over-the-air signals isn’t too much a concern, I believe, since it is what it is (taking topography and other factors into consideration) and has been that way since before 1960. If TV watchers want in-state programming and the only over-the-air signal is from out-of-state (Kirksville MO getting signals from Quincy IL), they currently have the DBS option available, and perhaps, cable to get St. Louis or Kansas City stations.

The main issue, in my case, is not having over-the-air or cable, and not having a choice with DBS. We are assigned to the Albuquerque DMA; therefore we get only that DMA programming, from out-of-state! The conclusion that because 90+% of us watch that DMA programming, that should be our DMA is totally unsound, since that is the only programming we can get. Of course 90+% of us watch it. This is probably the greatest flaw in this current situation. I recognize the commercial aspects of the decisions regarding this and would submit the minimum approach might be to ensure in-state news coverage for the “out-of-state DMAs”. Other programming (sports in particular) could have significant advertising and other commercial ramifications associated with it. FCC direction of “news only in-state” would minimize that.

One concern of a general nature is the use of MVPD term. From the wording of the Public Notice it would be concluded that this term is primarily a category that includes primarily cable operators and DBS operators. Since these have very different distribution methods, which result in very different “coverage areas”, as well as how the reception is controlled, the analysis must consider these two methods differently, and not combine them. They are, in some cases, a substitute for available over-the-air broadcasts (in or out-of-state), or the only source of broadcasts (in or out-of-state).

An observation for our locale is that, the areas (incorporated municipalities) served by cable operators get in-state programming, those outside the cable service areas depend on DBS and get only out-of-state programming. That’s in two, mostly rural, counties in south west Colorado.

A ground rule that might be presented in the final report is that “overlap”, the possibility of one household getting TV signals from two sources is not evaluated. That would be defined as receiving DBS and over-the-air

or cable and over-the-air. While this is a possibility, it greatly complicates establishing the out-of-state and over-the-air population. This assumption allows the conclusion that if a household does not receive TV signals from cable or DBS they must receive over-the-air signals, if they have a television receiver. Those households that must receive out-of-state, over-the-air programming for financial reasons and wish to receive in-state programming should be the subject of another study!

The following are my responses to the “Requests for Comment” in the subject Public Notice.

Section 304

Please consider the above as my response to the request for comment on “methodologies, metrics, data sources and level of granularity”. Since I have no access to the data requested, I cannot comment.

Section 304(1)

A general comment to this section as written in the Public Notice would be that while it appears this section applies to gathering data on over-the-air broadcasts, it’s difficult to establish that with certainty. The only clue I could find was the suggested use of OET 69, which establishes the acceptable probability of receiving over-the-air signals based established FCC analyses.

My specific response to the request for comment on the use of OET 69 is, it appears to be a reasonable criteria for the determination of TV broadcast over-the-air signals using topographical input. Individuals with experience in this area may disagree. I know of no other “data or methodologies” that could be used for this determination. My introductory comments prior to beginning Section 304 comments apply here, however in response to the request for comment on the type station to include in the analysis is to include all but the low power stations. These stations are licensed at low power for several reasons, but as long as they remain low power, their service area will be small and if outside the state-of-origin could be considered within the granularity of the analysis. If they should upgrade from “low-power” they would then fall under the now existing FCC Rules. Again, the service areas for over-the-air stations have been relatively constant since the mid-twentieth century. The issue with in-state programming has occurred with the advent of cable and DBS programming sources. The cable segment has been address previously, but the DBS segment has no regulations dealing with in/out-of-state programming.

Section 304(2)

I completely disagree with two of the statements/assumptions in this sub-section. First, the equation of “local market” with Designated Market Area (DMA, as established by the Nielsen Company) is inappropriate; in my case the source for our “Local Market” programming is Albuquerque NM, hardly “local” (approximately 250 miles away). The second aspect of this is the use of “money driven” segmentations as the basis for Public Law! Nielsen can change these at will without due consideration by representatives of the population. My second major disagreement is with the assumption that MVPD coverage household by household cannot be established. The DBS operators provide coverage for the vast majority of the country (exceptions being the Protectorates, Virgin Islands, etc.). These companies sell their services; hence have data on the in-state/out-

of-state location in relation to DMA. Cable Companies are not as “all-inclusive”, but can give the same information on households.

I concur with your interpretation of the terms “consumers” and “access”. I agree with your interpretation of the overall goal of the report, but not basing the results on DMAs alone. I feel, since the objections have been raised by representatives of states, the results should be formatted by state, then county, then out-of-state DMA followed by the affected households, to show the increasing detail. I would comment that while network affiliation might be a consideration in some instances, the primary concern, in my opinion, is the access to local news and weather. This isn’t an issue for over-the-air broadcast due to coverage area limitations, but cable and DBS operators can force subscribers access to programming from hundreds of miles away (and from another state). This is especially true for cable operators due to their access to non DBS downlinks.

The requirement to show the “extent” to which in-state programming is available may seem troublesome, but the goal of the report is to show the extent in-state coverage is provided, not in a blanket context, but in those areas where there is a problem, the “orphaned” or “under-served” portions of the DMAs that are across state boundaries. This should be available from the MVPDs just as the above data. However, I believe it will be discovered the answer for this aspect of the inputs will be that no in-state programming is offered to replace the out-of-state sources. This is particularly troublesome for subscribers (households) using the DBS operators. Efforts to create intervals of availability, etc. will, I believe, be wasted time.

The Public Notice is less than specific on just what data would be collected from what sources and how the data would be “processed”. I would offer the following suggestions for those “unknowns”. I would suggest requesting data from DBS operators for the number of subscribing households, by county, receiving out-of-state programming due to DMA (orphaned counties) as well as the number of households in those same counties they provide in-state programming (I expect this to be nearly zero). Second I suggest requesting similar data from the cable operators in those same “orphaned” counties. Also obtain the same data from cable operators for any other “orphaned” counties caused by that cable systems network (this may be zero, due to FCC Market Modification Rules). Then use OET 69 to establish the over-the-air coverage areas, by county, for broadcasts that are outside the state-of-origin. There will have to be some approximations to establish the number of households affected for this data segment. These may be rural areas and population density is low so again this may be in the granularity of the analysis. Then evaluate the recent census data for household population in those “orphaned” counties. It is uncertain if a “correction factor” needs to be considered with the census data to account for non-television households. This may be a consideration for the “granularity” question. I believe that completes the required input data. Using the census data the population of the orphaned counties is known. Using the DBS data, the number of “orphaned households” can be established due to DBS. Add to that the number of cable based “orphaned households” and the total number of “orphaned households” is derived.

I have previously objected to the use of “significantly viewed stations” data when only one set of out-of-state stations is available due to “sole source” considerations, therefore I will not comment further. I don’t believe I am qualified to comment on the issues associated with the protectorates (Guam, Virgin Islands, Puerto Rico) due to no knowledge of the in-place cable systems and DBS coverage. I do believe the FCC is obligated to

ensure they receive the same considerations as the 50 states. I personally know the Puerto Ricans are sensitive about being “second class” citizens.

Section 304(3)

My observation that most appropriately fits here, I think, is that it’s very difficult to establish the differences between the regulations governing the cable operators and those governing the DBS operators based on this Public Notice. It is obvious that there are differences however, such as the apparent lack of Market Modification Rules for DBS! Eliminating those differences might be the answer to this issue.

The use of DMAs as a basis for programming is OK, since they are (appropriate or not, see previous statements on this) the current basis for non-over-the-air programming. The “reassigning of certain counties to other DMAs” through use of Market Modification Rules would eliminate the issue. The extent of the revised programming (news only, news and sports or full programming) would remain a concern for “originating stations”.